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Attorneys for Defendant Whaleco Inc.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

ELI SILVA, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

WHALECO, INC., d/b/a TEMU,
Defendant.

Case No. 3:24-cv-02890-SK

**DECLARATION OF STEVEN N. FELDMAN
IN SUPPORT OF REPLY IN SUPPORT OF
DEFENDANT WHALECO INC.'S MOTION
TO COMPEL ARBITRATION**

Judge: Sallie Kim
Date: September 23, 2024
Time: 9:30 am
Courtroom: C

1 I, Steven N. Feldman, declare as follows:

2 1. I am a partner at the law firm of Latham & Watkins LLP, attorney for Defendant
3 Whaleco Inc. I am an attorney in good standing in the state of California. I am making this
4 Declaration in support of Defendant's Reply in Support of Motion to Compel Arbitration and have
5 personal knowledge of the facts set forth below; if called upon to do so, I can and will competently
6 testify thereto.

7 2. Attached as Exhibit A is a true and correct screenshot of the Temu Registration
8 Prompt as of February 2024, drawn from Figure 2 of the July 15, 2024 Declaration of Michael
9 Trinh in Support of Defendant's Motion to Compel Arbitration.¹

10 3. Attached as Exhibit B is a true and correct screenshot drawn from *Berman v.*
11 *Freedom Financial Network, LLC*, 30 F.4th 849, 861 (9th Cir. 2022).

12 4. Attached as Exhibit C is a true and correct screenshot drawn from *Farmer v.*
13 *BarkBox, Inc.*, No. 5:22-cv-01574-SSS-SHKx, 2023 WL 8522984, at *2 (C.D. Cal. Oct. 6, 2023).

14 5. Attached as Exhibit D is a true and correct screenshot drawn from the Declaration
15 of Nina Bayatti at 12, *Chabolla v. ClassPass Inc.*, No. 4:23-cv-00429-YGR (N.D. Cal. Apr. 21,
16 2023), ECF No. 28-1.

17 6. Attached as Exhibit E is a true and correct screenshot drawn from *Lopez v. Dave*
18 *Inc.*, No. 22-cv-04160-VC, 2022 WL 17089824, at *2 (N.D. Cal. Nov. 21, 2022).

19 7. Attached as Exhibit F is a true and accurate screenshot drawn from *Keebaugh v.*
20 *Warner Bros. Entertainment Inc.*, 100 F.4th 1005, 1010 (9th Cir. 2024).

21 8. Attached as Exhibit G is a true and accurate screenshot drawn from the Answering
22 Brief for Defendants-Appellees at 6, *Oberstein v. Live Nation Entertainment, Inc.*, No. 21-56200
23 (9th Cir. Apr. 7, 2022), ECF No. 30.

24 9. Attached as Exhibit H is a true and accurate screenshot drawn from the Opening
25 Brief for Plaintiffs-Appellants at 14, *Cullors v. Cerebral, Inc.*, No. 23-55594 (9th Cir. Dec. 5,
26 2023), ECF No. 12.

27
28 ¹ Appendix A is a chart comparing Exhibit A to each of Exhibits B–H.

1 I declare under penalty of perjury that the foregoing is true and correct. Executed on
2 September 4, 2024, in New York, New York.

3
4 Dated: September 4, 2024

/s/ Steven N. Feldman
Steven N. Feldman